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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 30.11.2006.

Gurcharan Singh @ Charan Singh .... Appellant.

vs

Surjit Kaur and others .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Vinod K.Kataria,Advocate,for the appellant.
Mr.Ramesh Kumar,Advocate,for respondents no.1 to 4.

Kiran Anand Lall, J.

This is a regular second appeal filed by the defendant, who had lost in both the courts below.

The trial court decreed the suit to the effect that the respondents were entitled to 1/7th share each, in the suit land, and the appellant was restrained from alienating or mortgaging their (of respondents) share in the land. The plea of the appellant that the original owner, Inder Singh, had bequeathed his total land in his and his brother's (Mahla Singh, defendant no.2) favour, by executing a will dated 23.10.1983 in their favour and the respondents were, therefore, not left with any rights therein, was rejected.

The fact that Inder Singh, the original owner, was husband of respondent no.6 and father of appellant and respondents no.1 to 5, is not in dispute. Therefore, under the Hindu Succession Act, all these parties would have inherited his estate, in equal shares. The appellant and Mahla Singh (respondent no.5) had, however, tried to non-suit the plaintiffs by setting up a will dated 23.10.1983 purporting to have been executed by Inder Singh, regarding his land, in their favour.

Both the courts below recorded a concurrent finding of fact that

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the will (dated 23.10.1983), Ex.D1, had not been proved, in accordance with the provisions of Section 69 of the Indian Evidence Act, and further held that it was, otherwise also, shrouded by suspicious circumstances. Its attesting witness, Hakam Singh, and the scribe, Sadhu Singh, had already expired. DW1 Balwinder Singh was produced to identify the hand-writing and signatures of his deceased father, Sadhu Singh. But, his deposition cannot be taken into consideration, as he had died before he could turn up for his cross-examination. In so far as the evidence of DW2, Gurcharan Singh, the appellant, is concerned, he was not present at the time of execution of the will, and as such, he could not have proved the will. Otherwise also, his testimony has been disbelieved by the trial court by taking note of glaring contradictions, appearing therein, particularly about the time when the testator handed over the will to him. In his examination-in-chief, he stated that his father (Inder Singh) handed over the will (Ex.D1) to him, 3-4 days prior to his death, but in cross-examination, he changed this version by deposing that the will was given to him, by his father, about 1½ months before his expiry.

A mere perusal of the document of will, it is clear, was sufficient to lead the courts below to discard it. In this regard, following observations of the trial court are noteworthy:-

> "Careful perusal of Will Ex.D.1 reveals that first 14 lines of this Will have been written in such a way that the space between the lines is wider than the space given between 15th line to 19th line of this Will. Careful perusal of 15th line to 19th line reveals that these lines have been narrowed down considerably, whereas the

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lines from 20 to 23 have again been written by leaving wider space. Such type of writing raises presumption that thumb impression of the executant was taken on a blank paper. The scribe, while writing lines from 1 to 14 thought that such type of writing would cover the blank paper, but when he reached at 14th line he thought that space left is quite insufficient to bring whole of the material yet to be written, therefore, he started narrowing down words and the space, again when the scribe completed 19th line, he thought that material yet to be written is smaller whereas space left is more and in order to cover the vacant space he again started writing bigger words by leaving wider space. When he wrote 23rd line he again thought that there is a smaller space between the thumb impression and the last line, therefore, he narrowed down his writing immediately above the thumb impression. These facts raise strong presumption that thumb impression was already existing on a blank paper and the scribe has tried his best to adjust whole of the material by adopting the method as narrated above. Accordingly, I hold that these things establish that the Will is surrounded by suspicious circumstances."

Another fact which is very significant is that, as mentioned in para no.15 of the judgment of the trial court, Inder Singh had filed a suit, bearing no.387 of 16.11.1983, against Gurcharan Singh, appellant-herein.

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He (Inder Singh), however, died during the pendency of the suit, and as such, all the parties to the present suit, were brought on the record of that suit, as his legal representatives. But, in the application moved by the present appellant (and others), for the purpose, there was no reference to any will left by the deceased (Inder Singh). Needless to say that had will Ex.D1 been in existence, there was no reason for which the appellant-herein would not have referred to that, in that application. The only conclusion which can, therefore, be drawn is that the will, Ex.D1, propounded by the appellant in the present suit, is a sham document.

A perusal of the above discussion shows that, it cannot be said, by any method of interpretation, that any substantial question of law is involved in this appeal. That being so, the appeal deserves to be dismissed in limine, and it is so ordered.

30.11.2006. (Kiran Anand Lall)
vs. Judge.